

Ex-Nxivm adviser faces larceny counts

Joseph O'Hara accused of taking \$232,607 from the Ethical Foundation

By Paul Nelson, Staff writer
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ALBANY -- A former adviser for the Colonie-based company Nxivm was indicted Friday on charges he bilked thousands of dollars from a foundation affiliated with the human development group.

Albany County prosecutors allege Joseph O'Hara, 59, of Loudonville swindled the Ethical Foundation out of \$232,607 between May 2004 and August 2005.

O'Hara, a former Albany Firebirds executive and the one-time owner of the semipro Capital Region Pontiacs basketball squad, pleaded not guilty in Albany County Court on Friday to felony grand larceny charges.

After O'Hara's arraignment, his attorney, Brian Devane, said the foundation was owned by his client.

But Alan Korman, an attorney for Nxivm, says O'Hara took money from wealthy Saratoga residents Clare and Sara Bronfman and other Nxivm supporters. Nxivm already has a lawsuit pending against O'Hara.

O'Hara had direct access to the funds because he managed the foundation and served as its attorney, Korman said.

Authorities say Nxivm was looking to establish a scientific research foundation when O'Hara, who had a Massachusetts-based foundation called Humanalysis, was recommended.

The two sides worked out an agreement and Humanalysis soon morphed into the Ethical Foundation, authorities said.

Nxivm, also known as Executive Success Programs, conducts group awareness seminars. The company put out a statement Friday night saying O'Hara concealed his activity by changing the name of an already established nonprofit foundation affiliated with their company to a new one and then diverting funds from Nxivm's contributors.

"We believe and the evidence will show that Mr. O'Hara was engaged in a methodical and well thought-out plan to steal money from Nxivm and its supporters in a scheme that has far-ranging implications, including the involvement of other individuals who may be named at a later time," said Korman in the document.

They also say the indictment "vindicates the organization from the outrageous accusations made by Mr. O'Hara and his cohorts who have tried to portray us in an

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extremely negative light in an effort to distract others from uncovering their illegal and unethical business practices against our organization."

Once he parted ways with the company, O'Hara became one of its fiercest critics, branding it a cult. He referred to the company as "an extremely dangerous group" and established the Stop Nxivm/ESP Now Legal Defense Fund.

The indictment unsealed in court Friday says O'Hara, who remains free on \$50,000 bail, took the money from the State Street Branch of Charter One Bank in Albany.

Nxivm is among a group of plaintiffs suing O'Hara, alleging he swindled them out of about \$2.5 million in payments and loans from 2003 to 2005. That civil action, which was filed in U.S. District Court in Albany in August of 2005, is pending.

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met with Mitzen and Nancy Salzman and he reiterated to both that he did not practice law in New York. Nonetheless, after this meeting, on or about September 22, 2003, O'Hara drafted and forwarded a Strategic Plan that would cover various consultation services, including public relations, lobbying, and marketing needs. In fact there were three drafts before the Plan was reduced to its final form. Dkt. No. 68, Ex. F.⁶ Within the Strategic Plan and its cover letter, other entities, such as law, lobbying, and public relations firms are mentioned, and O'Hara identifies himself as the Strategic Plan Coordinator. Apparently based upon this proposal, the parties agreed to enter into a Professional Service Agreement on or about September 29, 2003. This Agreement was limited for the term of October 1, 2003 through December 31, 2004, and O'Hara is identified as Consultant throughout. Ostensibly, the parties were operating under this Agreement even though it was not signed by Salzman. Dkt. No. 65, O'Hara's Decl., dated Nov 20, 2006, at ¶¶ 1-10; *see also* Dkt. No. 61, Nancy Salzman's Reply Decl., dated Dec. 1, 2006, at ¶¶ 3 & 4.

In terms of the scope of any legal representation, and to understand the issues in this Omnibus Motion, there are two critical passages within the Professional Service Agreement:

The Consultant will provide - and/or help the Company the Company/Executive Success Programs to obtain - appropriate technical assistance and/or consultative services that will help . . . to resolve various issues In this regard, those issues, include but are not limited to . . . the legal status of Company/Executive Success Programs in New York State . . . [.]

Dkt. No. 68, Ex. G, at p. 1.

The Consultant will help to coordinate the work of various attorneys who are

⁶ There was a cover letter addressed to Keith Raniere in which O'Hara wrote,

if you are interested in having me serve as NXIVM's "Strategic Plan Coordinator," I will draft a "Letter-of Agreement" I will structure my proposed compensation in a manner which recognizes the fact that the responsibility and time commitment of the "Strategic Plan Coordinator" will be directly tied to the scope-of-work that will be undertaken by the various entities that will be providing services to NXIVM in conjunction with the "Strategic Plan[.]"

Dkt. No. 68, Ex. F.

title, and has been identified as a "volunteer consultant," the founder or "defacto leader" of NXIVM is Kenneth Raniere. NXIVM provides an exclusive seminar training program primarily for executives, though extended to others as well, known as Executive Success. Executive Success employs a methodology called Rational Inquiry™, which is purported to improve communication skills, memory, and decision-making. NXIVM claims that Rational Inquiry™ is proprietary and thus protected.

R Joseph O'Hara has worn many professional hats over his thirty-year career. Although he is an attorney admitted to practice law in Washington D.C., but not in the State of New York, for most of his career he has been a business man and a lobbyist. In reference to his many business ventures in New York, he is the President and Chief Executive Officer (CEO) of Strategic Government Solutions, Inc., and The O'Hara Group & Associates, LLC ("TOGA LLC"). As reported on his resume, TOGA LLC is a New York based limited liability company that provides lobbying and marketing services to both private and public sector clients. Dkt. No. 68, Ex. A. Early in his career, O'Hara practiced law in Washington D.C., however, that practice became relatively dormant until July 2004. O'Hara re-established his practice of law as TOGA PLLC that now serves government and municipal agencies, school districts, and clients of Strategic Governmental Solutions, Inc. ("SGSI"). Dkt. No. 68, Ex. G, O'Hara Decl., dated Sept. 8, 2005, at ¶ 6; O'Hara Decl., dated Nov. 20, 2006, at ¶ 4, Ex. A (resume).

T In September 2003, Dee Dee Mitzen, a representative of NXIVM, contacted O'Hara to assist them because NXIVM's business was affected by negative publicity generated by its litigation against Rick Ross and the Ross Insitute. O'Hara avers that he told Mitzen that he did not practice law in New York but was in a position to recommend attorneys. On September 17, 2004, O'Hara

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plural. In addition to this litigation, there is related litigation in the District of New Jersey. The facts in these cases could not be any more convoluted and are rendered more complicated by the tri-party litigious bloodletting that obfuscates any transparency or lucidity. Weighing the vitriolic verbiage dispensed from geometric angles of this issue, it is a wonder if any court could pierce the "perceptual pall" of these legal combatants to discern the true particulars of these Motions and an agreeable set of facts.⁵ The divergence of relevant facts are overcast by the matter of credibility. Perspective, credibility and the multifaceted array of arguments and exhibits notwithstanding, after considerable study of the submissions, we submit that we are able to assemble some semblance of the facts. Because there are so many permutations of the facts and issues, we are regrettably obligated to discuss the fractious history of these litigants and their related cases.

A. Relationship Between NXIVM and Joseph O'Hara

NXIVM Corporation appears to be the successor corporation to Executive Success Program, Inc. ("ESP"). If not the successor, then they are one and the same. The President of NXIVM is Nancy Salzman and other key and relevant officials and personalities, particularly with regards to these Motions, are Kristin Keefe, an employee who may have acted as the "Corporate Legal Liaison," and Kenneth Raniere. Dkt. No. 57, Ex. R, Kristin Keefe, Decl., dated Aug. 7, 2006, Ex. AD, Nancy Salzman Decl., dated Sept. 12, 2005, at ¶ 3; Dkt. No. 68, Ex. O, O'Hara Lt., dated Nov. 19, 2004 at p. 1; Dkt. No. 71, Kristin Keefe Decl., dated Jan. 8, 2007. Although he has no official

⁵ Periodically percolating throughout the pleadings, motion papers and the oppositions thereto, and the corresponding affidavits and exhibits in this and the New Jersey case are *ad hominem* attacks, scurrilous and specious name calling, and provocative charges of ill-motives on the part of all litigants and even the litigators that have not served any party well. Cumulatively, all parties have cluttered the discussion with clever and passionate prattle rather than precise pronouncement of the facts and the issues. The Honorable Mark Falk, United States Magistrate Judge for the District of New Jersey, listed some of the more opprobrious statements that confront both courts. New Jersey Tr., at pp. 30-34. These virulent commentaries have distracted and even sullied what are, generally speaking, well written memoranda.